

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

ASHLEY POPA, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

HARRIET CARTER GIFTS, INC., a
Pennsylvania corporation, and NAVISTONE,
INC., a Delaware corporation,

Defendants.

Case No. 2:19-cv-00450-WSS

**SECOND CONSENT MOTION TO
AMEND SECOND CASE MANAGEMENT ORDER (ECF 126)**

Plaintiff Ashley Popa (“Plaintiff”) and Defendants Harriet Carter Gifts, Inc. and NaviStone, Inc. (collectively, “Defendants”) respectfully move this Court to amend the Second Case Management Order (ECF 126) and in support aver the following:

1. The Court entered its Second Case Management Order (ECF 126) on November 7, 2022, authorizing post-remand discovery limited to the issues raised by the Third Circuit, location, privacy policy, and consent, and setting a schedule for post-remand summary judgment briefing. *Id.*

2. On February 1, 2023, the Court issued a briefing schedule for discovery motions. ECF 133.

3. On February 15, 2023, the Court amended the Second Case Management Order to vacate the summary judgment briefing schedule. ECF 135.

4. After the Court ruled on the discovery motions, the parties completed post-remand fact discovery.

5. The parties then met and conferred in good faith on a proposed summary judgment briefing schedule, but reached an impasse over whether additional expert discovery could be included in the schedule. Plaintiff proposed a schedule that included a period of additional expert discovery; Defendants proposed a schedule that did not.

6. On November 3, 2023, the Court held a telephonic discovery conference at which the Court discussed the competing proposals with the parties.

7. In light of that colloquy, while Defendants reserve their objections to an additional period of expert discovery, the parties have agreed to the deadlines set out in the summary judgment briefing schedule below.

8. Accordingly, they request that the Court issue an order amending the Second Case Management Order (ECF 126) to include the following deadlines:

- Additional and supplemental expert disclosures by the parties addressing the issues of location, privacy policy, and consent within 90 days of the Court's order amending the Second Case Management Order;
- Additional and supplemental rebuttal expert disclosures by the parties within 30 days of the close of the expert disclosure period;
- Depositions of any designated expert, with the parties cooperating to ensure that they are completed within 30 days of the close of the rebuttal expert disclosure period;
- Defendants' summary judgment motion to be filed within 28 days of the close of the expert deposition period;
- Plaintiff's opposition to be filed within 28 days of the date Defendants' summary judgment motion is filed; and

- Defendants' reply to be filed within 14 days of the date Plaintiff's opposition is filed.

9. This motion is filed in good faith and will not prejudice any party.

WHEREFORE, the parties respectfully request that this Court grant the motion and enter the proposed order amending the Second Case Management Order.

Dated: November 13, 2023

/s/ Kelly K. Iverson

Gary F. Lynch
Kelly K. Iverson
Elizabeth Pollock-Avery
LYNCH CARPENTER LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222
(412) 322-9243
glynch@lcllp.com
kiverson@lcllp.com
eavery@lcllp.com

Counsel for Plaintiff

/s/ Sarah A. Ballard

Paul G. Karlsgodt (*pro hac vice*)
Sarah A. Ballard
BAKER & HOSTETLER LLP
1801 California Street, Suite 4400
Denver, Colorado 80202
pkarlsgodt@bakerlaw.com
sballard@bakerlaw.com

Carrie H. Dettmer Slye (*pro hac vice*)
BAKER & HOSTETLER LLP
312 Walnut Street, Suite 3200
Cincinnati, Ohio 45202-4074
cdettmerslye@bakerlaw.com

*Attorneys for Defendant
Harriet Carter Gifts, Inc.*

Respectfully submitted,

Devin Chwastyk
I.D. No. 91852
MCNEES WALLACE & NURICK LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000
(717) 237-5300 (fax)
dchwastyk@mcneeslaw.com

/s/ David Swetnam-Burland

David W. Bertoni (*pro hac vice*)
David Swetnam-Burland (*pro hac vice*)
Eamonn Hart (*pro hac vice*)
BRANN & ISAACSON
113 Lisbon St.
P.O. Box 3070
Lewiston, ME 04243-3070
(207) 786-3566
(207) 783-9325 (fax)
dbertoni@brannlaw.com
dsb@brannlaw.com
ehart@brannlaw.com

Attorneys for Defendant NaviStone, Inc